

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ARTHUR RAY MONTGOMERY,

Petitioner,

v.

ORDER
05-CV-829S

R.K. WOODS, Warden,

Respondent.

1. On August 9, 2005, Petitioner commenced this petition for habeas corpus relief pursuant to 28 U.S.C. § 2254. This case was subsequently transferred to this district on or about November 22, 2005.

2. On September 6, 2006, this Court referred this case to the Honorable Hugh B. Scott, United States Magistrate Judge, for all proceedings necessary for a determination of the factual and legal issues presented, and to prepare and submit a report and recommendation containing findings of fact, conclusions of law and a recommended disposition of the petition pursuant to 28 U.S.C. § 636(b)(1)(B).

3. On July 21, 2008, Judge Scott filed a Report and Recommendation recommending the petition for habeas corpus be denied. No Objections to the Report and Recommendation were received from either party within ten (10) days from the date of its service, in accordance with 28 U.S.C. § 636(b)(1)(B).

4. This Court has carefully reviewed Judge Scott's Report and Recommendation as well as the underlying papers.

IT HEREBY IS ORDERED, that this Court accepts Judge Scott's Report and Recommendation (Docket No. 13) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Petitioner's petition for habeas corpus relief is DENIED.

FURTHER, that because the issues raised in the petition are not the type that a court could resolve in a different manner, and because these issues are not debatable among jurists of reason, this Court concludes that Petitioner has failed to make a substantial showing of the denial of a constitutional right, 28 U.S.C. § 2253(c)(2), and accordingly, a Certificate of Appealability is DENIED and shall not issue.

FURTHER, that this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal would not be taken in good faith.

FURTHER, that the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: January 13, 2009
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge